



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/164427

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on April 14, 2015, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits because he was residing in a nursing home following an accident.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated February 19, 2015. It informed Petitioner that he had been overissued FoodShare in the amount of \$776.00 for the period from November 1, 2014 through February 28, 2015.

3. The basis for this FoodShare overissuance claim was that Petitioner was admitted to a nursing home in August 2014 following a motor vehicle accident. He completed a six month report form in October 2014 and reported his home address rather than his nursing home address and continued to receive FoodShare benefits. Though he hopes and expects to be released soon he was still in the nursing home as of the date of this hearing.
4. Petitioner's FoodShare group is one person but his residence in the community is the home of his sister.
5. Petitioner's FoodShare were discontinued effective February 28, 2015.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

Also applicable here is the following:

3.2.1.4 Institution

An institution is any establishment that provides care and/or services above and beyond meals and lodging.

A resident of an institution is anyone who receives most of his/her meals as part of the institution's normal operation.

Residents of institutions are ineligible for FS.

...

FSH, §3.1.1.4 and also see 7 *CFR* 273.1(b)(7).

Finally, an absence is temporary if for no more than 2 calendar months. *FSH*, §3.2.1.2.

Petitioner notes that he assumed that when his address was requested on the six month report form it meant his permanent home address not what he views as his temporary address – the nursing home. While I understand the confusion, Petitioner had already been away from his home for more than 2 calendar months as of the beginning of the overpayment period and that absence continued through at least the date of the hearing. Thus Petitioner was not eligible for FoodShare. Given these circumstances, Petitioner was overissued FoodShare for the period from November 1, 2014 through February 28, 2015 and the agency may proceed to collect that overissuance.

I do note for Petitioner's benefit the following *FSH* provision as to repayment of an overissuance:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

CONCLUSIONS OF LAW

That Petitioner was overissued FoodShare in the amount of \$776.00 for the period from November 1, 2014 through February 28, 2015 and the agency may proceed to collect that overissuance.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of April, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 21, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability